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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
SUMARNA SHRESTHA, VICTOR DIAS,  
RAJENDRA THAPA CHHETRI, AJAYA  
NAGARKOTI, MODOU THIAM, JALAL  
KHAN, LOKENDRA BAHADUR, RAJIV  
MAHARJAN, RAKESH GURUNG, PUJA  
SHRESTHA, BASKARAN NAGARAJAH,  
ALDRINE BRITTO, RAVI BUDHA  
MAGAR, SHIVRAJ (A/K/A SHIVREN)  
GHALE, and SONAM TASHI *individually  
and on behalf of others similarly situated,*

**COMPLAINT**

**COLLECTIVE ACTION UNDER  
29 U.S.C. § 216(b)**

**ECF Case**

*Plaintiffs,*

-against-

CURRY SHACK CORP. (D/B/A KURRY  
PAVILION) and SALIH PEKIC,

*Defendants.*

-----X

Sumarna Shrestha, Victor Dias, Rajendra Thapa Chhetri, Ajaya Nagarkoti, Modou  
Thiam, Jalal Khan, Lokendra Bahadur, Rajiv Maharjan, Rakesh Gurung, Puja Shrestha,  
Baskaran Nagarajah, Aldrine Britto, Ravi Budha Magar, Shivraj (a/k/a Shivren) Ghale, and  
Sonam Tashi (collectively the, “Plaintiffs”), by and through their attorneys, Michael Faillace &

Associates, P.C., upon their knowledge and belief, and as against Defendants Curry Shack Corp. (d/b/a Kurry Pavilion) (the “Defendant Corporation”) and Salih Pekic (the “Defendant Individual”), allege as follows:

**NATURE OF THE ACTION**

1. Plaintiffs are current and former employees of Defendants Curry Shack Corp. (d/b/a Kurry Pavilion), and Salih Pekic (collectively, “Defendants”).
2. Defendants own, operate, or control an Indian restaurant located at 430 3rd Ave, New York, NY 10016 under the name Kurry Pavilion.
3. Upon information and belief, individual Defendant Salih Pekic serves or served as owner, manager, principal, or agent of Defendant Corporation and, through this corporate entity, operates or operated the restaurant as a joint or unified enterprise.
4. Plaintiffs have been employed as servers, food runners, assistant to the manager, cooks, kitchen helpers, dishwashers, and delivery workers.
5. However, some tipped workers have been required to spend a considerable part of their work day performing non-tipped duties including but not limited to, cutting vegetables and wiping down cutlery, cleaning bathrooms, cleaning windows, cleaning and setting up tables, sweeping, mopping, filling stations, folding cardboard boxes, transporting food from the basement to upstairs, taking out condiments, preparing sauces, buying ice and food items from the supermarket, preparing deliveries and transporting them towards the back of the restaurant, cutting lemons, preparing salads, polishing plates and glasses, shoveling snow, correctly placing linens, and preparing inventory lists (hereinafter the “non-tipped duties”).

6. At all times relevant to this Complaint, Plaintiffs have worked for Defendants in excess of 40 hours a week, without appropriate minimum wage and overtime compensation for the hours that they have worked.

7. Rather, Defendants have failed to pay Plaintiffs appropriately for any hours worked, either at the straight rate of pay or for any additional overtime premium.

8. Further, Defendants have failed to pay Plaintiffs the required “spread of hours” pay for any day in which they have worked over 10 hours per day.

9. Defendants have employed and accounted for some Plaintiffs as tipped workers in their payroll, but in actuality these Plaintiffs’ duties have required a significant amount of time spent performing the non-tipped duties outlined above.

10. Regardless, Defendants have paid tipped Plaintiffs at a rate that is lower than the required tip-credit rate.

11. However, under state law, Defendants are not entitled to take a tip credit because Plaintiffs’ non-tipped duties usually have exceeded 20% of each workday 12 N.Y. C.R.R. §146.

12. Upon information and belief, Defendants have employed the policy and practice of disguising these Plaintiffs’ actual duties in payroll records by designating them as tipped employees instead of non-tipped employees. This has allowed Defendants to avoid paying Plaintiffs at the minimum wage rate and enabled them to pay these Plaintiffs the lower tip-credited rate (which they still have failed to do).

13. Defendants’ conduct extends beyond Plaintiffs to all other similarly situated employees.

14. At all times relevant to this Complaint, Defendants have maintained a policy and practice of requiring Plaintiffs and other employees to work in excess of forty (40) hours per

week without providing the minimum wage and overtime compensation required by federal and state law and regulations.

15. Plaintiffs now bring this action on behalf of themselves, and other similarly situated individuals, for unpaid minimum and overtime wages pursuant to the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 *et seq.* (“FLSA”), and for violations of the N.Y. Labor Law §§ 190 *et seq.* and 650 *et seq.* (the “NYLL”), and the “spread of hours” and overtime wage orders of the New York Commissioner of Labor codified at N.Y. COMP. CODES R. & REGS. Tit. 12, § 146-1.6 (herein the “Spread of Hours Wage Order”), including applicable liquidated damages, interest, attorneys’ fees and costs.

16. Plaintiffs seek certification of this action as a collective action on behalf of themselves individually and all other similarly situated employees and former employees of Defendants pursuant to 29 U.S.C. § 216(b).

### **JURISDICTION AND VENUE**

17. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question) and the FLSA, and supplemental jurisdiction over Plaintiffs’ state law claims under 28 U.S.C. § 1367(a).

18. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) because all, or a substantial portion of, the events or omissions giving rise to the claims occurred in this district, Defendants maintain their corporate headquarters and offices within this district, and Defendants operate a restaurant located in this district. Further, Plaintiffs were employed by Defendants in this district.

**THE PARTIES**

*Plaintiffs*

19. Plaintiff Sumarna Shrestha (“Plaintiff Sumarna” or “Ms. Sumarna”) is an adult individual residing in Queens County, New York. Plaintiff Sumarna was employed by Defendants from approximately January 10, 2016 until on or about August 5, 2017.

20. Plaintiff Victor Dias (“Plaintiff Dias” or “Mr. Dias”) is an adult individual residing in Queens County, New York. Plaintiff Dias was employed by Defendants from approximately December 2015 until on or about July 1, 2017.

21. Plaintiff Rajendra Thapa Chhetri (“Plaintiff Thapa” or “Mr. Thapa”) is an adult individual residing in Queens County, New York. Plaintiff Thapa was employed by Defendants from approximately April 4, 2016 until on or about July 23, 2017.

22. Plaintiff Ajaya Nagarkoti (“Plaintiff Nagarkoti” or “Mr. Nagarkoti”) is an adult individual residing in Queens County, New York. Plaintiff Nagarkoti has been employed by Defendants from approximately June 2016 until the present date.

23. Plaintiff Modou Thiam (“Plaintiff Thiam” or “Mr. Thiam”) is an adult individual residing in New York County, New York. Plaintiff Thiam has been employed by Defendants from approximately January 2016 until the present date.

24. Plaintiff Jalal Khan (“Plaintiff Khan” or “Mr. Khan”) is an adult individual residing in Bronx County, New York. Plaintiff Khan has been employed by Defendants from approximately January 1, 2016 until the present date.

25. Plaintiff Lokendra Bahadur (“Plaintiff Bahadur” or “Mr. Bahadur”) is an adult individual residing in Queens County, New York. Plaintiff Bahadur was employed by Defendants from approximately July 28, 2017 until on or about August 14, 2017.

26. Plaintiff Rajiv Maharjan (“Plaintiff Maharjan” or “Mr. Maharjan”) is an adult individual residing in Queens County, New York. Plaintiff Maharjan was employed by Defendants from approximately March 2016 until on or about April 2017.

27. Plaintiff Rakesh Gurung (“Plaintiff Gurung” or “Mr. Gurung”) is an adult individual residing in Queens County, New York. Plaintiff Gurung has been employed by Defendants from approximately June 19, 2017 until the present date.

28. Plaintiff Puja Shrestha (“Plaintiff Puja” or “Ms. Puja”) is an adult individual residing in Queens County, New York. Plaintiff Puja was employed by Defendants from approximately August 2016 until on or about June 2017.

29. Plaintiff Baskaran Nagarajah (“Plaintiff Nagarajah” or “Mr. Nagarajah”) is an adult individual residing in Queens County, New York. Plaintiff Nagarajah was employed by Defendants from approximately December 12, 2015 until on or about July 10, 2017.

30. Plaintiff Aldrine Britto (“Plaintiff Britto” or “Mr. Britto”) is an adult individual residing in Queens County, New York. Plaintiff Britto was employed by Defendants from approximately March 2016 until on or about November 2016.

31. Plaintiff Ravi Budha Magar (“Plaintiff Magar” or “Mr. Magar”) is an adult individual residing in Queens County, New York. Plaintiff Magar has been employed by Defendants from approximately July 10, 2017 until the present date.

32. Plaintiff Shivraj (a/k/a Shivren) Ghale (“Plaintiff Ghale” or “Mr. Ghale”) is an adult individual residing in Queens County, New York. Plaintiff Ghale was employed by Defendants from approximately January 17, 2016 until on or about November 24, 2016.

33. Plaintiff Sonam Tashi (“Plaintiff Tashi” or “Mr. Tashi”) is an adult individual residing in Queens County, New York. Plaintiff Tashi was employed by Defendants from approximately August 31, 2016 until on or about July 21, 2017.

*Defendants*

34. At all relevant times, Defendants owned, operated, or controlled an Indian restaurant located at 430 3rd Ave, New York, NY 10016 under the name “Kurry Pavilion.”

35. Upon information and belief, Curry Shack Corp. (Defendant Corporation) is a domestic corporation organized and existing under the laws of the State of New York. Upon information and belief, defendant corporation maintains its principal place of business at 430 3<sup>rd</sup> Avenue, New York, NY 10016.

36. Defendant Salih Pekic is an individual engaging (or who was engaged) in business in this judicial district during the relevant time period. Defendant Salih Pekic is sued individually in his capacity as owner, officer and/or agent of the Defendant Corporation. Defendant Salih Pekic possesses operational control over Defendant Corporation, an ownership interest in Defendant Corporation, or controls significant functions of Defendant Corporation. He determined the wages and compensation of the employees of Defendants, including Plaintiffs, and established the schedules of the employees, maintained employee records, and had the authority to hire and fire employees.

**FACTUAL ALLEGATIONS**

*Defendants Constitute Joint Employers*

37. Defendants operate an Indian restaurant located at 430 3rd Ave, New York, NY 10016.

38. The individual defendant Salih Pekic, possesses operational control over Defendant Corporation, possesses ownership interests in Defendant Corporation, and controls significant functions of Defendant Corporation.

39. Defendants are associated and joint employers, act in the interest of each other with respect to employees, pay employees by the same method, and share control over the employees.

40. Each Defendant possessed substantial control over Plaintiffs' (and other similarly situated employees') working conditions, and over the policies and practices with respect to the employment and compensation of Plaintiffs, and all similarly situated individuals, referred to herein.

41. Defendants jointly employed Plaintiffs (and all similarly situated employees) and are Plaintiffs' (and all similarly situated employees') employers within the meaning of 29 U.S.C. 201 *et seq.* and the NYLL.

42. In the alternative, Defendants constitute a single employer of Plaintiffs and/or similarly situated individuals.

43. Upon information and belief, individual Defendant Salih Pekic operates Defendant Corporation as either an alter ego of himself and/or fails to operate Defendant Corporation as an entity legally separate and apart from himself, by among other things:

- a. failing to adhere to the corporate formalities necessary to operate Defendant Corporation as a corporation;
- b. defectively forming or maintaining the corporate entity of Defendant Corporation, by, amongst other things, failing to hold annual meetings or maintaining appropriate corporate records;



- c. transferring assets and debts freely as between all Defendants;
- d. operating Defendant Corporation for his own benefit as the sole or majority shareholder;
- e. operating Defendant Corporation for his own benefit and maintaining control over it as a closed corporation;
- f. intermingling assets and debts of his own with Defendant Corporation,
- g. diminishing and/or transferring assets of Defendant Corporation to avoid full liability as necessary to protect his own interests, and
- h. other actions evincing a failure to adhere to the corporate form.

44. At all relevant times, Defendants have been Plaintiffs' employers within the meaning of the FLSA and New York Labor Law. Defendants have had the power to hire and fire Plaintiffs, have controlled the terms and conditions of employment, and have determined the rate and method of any compensation in exchange for Plaintiffs' services.

45. In each year from 2015 to the present date, Defendants, both separately and jointly, have had a gross annual volume of sales of not less than \$500,000 (exclusive of excise taxes at the retail level that are separately stated).

46. In addition, upon information and belief, Defendants and/or their enterprise have been directly engaged in interstate commerce. As an example, numerous items that are used in the restaurant on a daily basis are goods produced outside of the State of New York.

*Individual Plaintiffs*

47. Plaintiffs are present and former employees of Defendants who have been employed as servers, food runners, assistant to the manager, cooks, kitchen helpers, dishwashers, and delivery workers. However, the tipped workers have spent a considerable amount of time

performing the non-tipped duties described above.

48. Plaintiffs seek to represent a class of similarly situated individuals under 29 U.S.C. 216(b).

*Plaintiff Sumarna Shrestha*

49. Plaintiff Sumarna was employed by Defendants from approximately January 10, 2016 until on or about August 5, 2017.

50. Defendants ostensibly employed Plaintiff Sumarna as a waitress and bartender.

51. Plaintiff Sumarna regularly handled goods in interstate commerce, such as food and other supplies produced outside the State of New York.

52. Plaintiff Sumarna's work duties required neither discretion nor independent judgment.

53. Throughout her employment with Defendants, Plaintiff Sumarna regularly worked in excess of 40 hours per week.

54. From approximately January 2016 until on or about August 5, 2017, Plaintiff Sumarna worked from approximately 11:30 a.m. until on or about 11:30 p.m. (with a 2-hour break) four days a week and from approximately 11:30 a.m. until on or about 12:30 a.m. (with a 2-hour break) two days a week (typically 62 hours per week).

55. From approximately January 2016 until on or about September 2016, Plaintiff Sumarna was paid her wages in cash.

56. From approximately September 2016 until on or about August 6, 2017, Plaintiff Sumarna was paid her wages by personal check.

57. From approximately January 2016 until on or about April 2016, Defendants ostensibly paid Plaintiff Sumarna a fixed salary of approximately \$150 per day, but failed to fulfill payments.

58. For example, Plaintiff Sumarna ostensibly received \$3,600 per month, but actually received approximately \$500 in the month of January 2016, approximately \$500 in the month of February 2016, approximately \$900 in the month of March 2016, and approximately \$600 in the month of April 2016.

59. From approximately early May 2016 until on or about August 5, 2017, Defendants paid Plaintiff Sumarna a fixed salary of approximately \$45 per day. However, from approximately June 25, 2017 until on or about August 5, 2017, Plaintiff Sumarna did not receive her wages until approximately August 6, 2017.

60. Plaintiff Sumarna's pay did not vary even when she was required to stay late or work a longer day than her usual schedule.

61. In fact, defendants required Plaintiff Sumarna to continue working 30 minutes past her regular departure time every day, and did not pay her for the additional time worked.

62. Defendants did not provide Plaintiff Sumarna with an accurate statement of wages with each payment of wages, as required by NYLL 195(3).

63. No notification, either in the form of posted notices or other means, was ever given to Plaintiff Sumarna regarding overtime and wages under the FLSA and NYLL.

64. Defendants did not give any notice to Plaintiff Sumarna of her rate of pay, employer's regular pay day, and such other information as required by NYLL §195(1).

65. Defendants required Plaintiff Sumarna to purchase "tools of the trade" with her own funds—including two uniforms.

*Plaintiff Victor Dias*

66. Plaintiff Dias was employed by Defendants from approximately December 2015 until on or about July 1, 2017.

67. Defendants employed Plaintiff Dias as a cook.

68. Plaintiff Dias regularly handled goods in interstate commerce, such as food and other supplies produced outside the State of New York.

69. Plaintiff Dias's work duties required neither discretion nor independent judgment.

70. Throughout his employment with Defendants, Plaintiff Dias regularly worked in excess of 40 hours per week.

71. From approximately December 2015 until on or about November 28, 2016, Plaintiff Dias worked from approximately 11:00 a.m. until on or about 3:00 p.m. and from approximately 5:00 p.m. until on or about 11:00 p.m. five days a week, and from approximately 11:00 a.m. until on or about 3:00 p.m. and from approximately 5:00 p.m. until on or about 11:30 p.m. one day a week (typically 60.5 hours per week).

72. From approximately November 29, 2016 until on or about December 18, 2016, Plaintiff Dias worked from approximately 11:00 a.m. until on or about 11:30 p.m. (with a 2-hour break) seven days a week (typically 73.5 hours per week).

73. From approximately December 19, 2016 until on or about July 1, 2017, Plaintiff Dias worked from approximately 11:00 a.m. until on or about 11:30 p.m. (with a 2-hour break) six days a week (typically 63 hours per week).

74. From approximately December 2015 until on or about August 2016, Defendants paid Plaintiff Dias his wages in cash.

75. From approximately September 2016 until on or about July 1, 2017, Defendants paid Plaintiff Dias his wages by check.

76. From approximately December 2015 until on or about November 2016, Defendants paid Plaintiff Dias a fixed salary of \$700 per week.

77. From approximately November 2016 until on or about June 2016, Defendants paid Plaintiff Dias a fixed salary of \$750 per week.

78. From approximately July 2016 until on or about November 2016, Defendants failed to pay Plaintiff Dias any wages for his hours worked.

79. From approximately December 2016 until on or about May 28, 2017, Defendants paid Plaintiff Dias a fixed salary of \$750 per week.

80. From approximately May 29, 2017 until on or about July 1, 2017, Defendants failed to pay Plaintiff Dias any wages for his hours worked.

81. Defendants did not provide Plaintiff Dias with an accurate statement of wages with each payment of wages, as required by NYLL 195(3).

82. No notification, either in the form of posted notices or other means, was ever given to Plaintiff Dias regarding overtime and wages under the FLSA and NYLL.

83. Defendants did not give any notice to Plaintiff Dias of his rate of pay, employer's regular pay day, and such other information as required by NYLL §195(1).

84. Defendants required Plaintiff Dias to purchase "tools of the trade" with his own funds—including two pairs of kitchen shoes.

*Plaintiff Rajendra Thapa Chhetri*

86. Plaintiff Thapa was employed by Defendants from approximately April 4, 2016 until on or about July 23, 2017.

87. Defendants ostensibly employed Plaintiff Thapa as a delivery worker.

88. However, throughout his employment, Plaintiff Thapa was required to spend a significant portion of his work day performing the non-tipped, non-delivery duties described above.

89. Although Plaintiff Thapa ostensibly was employed as a tipped employee, he spent over 20% of his work days performing non-tipped work throughout his employment with Defendants.

90. Plaintiff Thapa regularly handled goods in interstate commerce, such as food and other supplies produced outside the State of New York.

91. Plaintiff Thapa's work duties required neither discretion nor independent judgment.

92. Throughout his employment with Defendants, Plaintiff Thapa regularly worked in excess of 40 hours per week.

93. From approximately April 4, 2016 until on or about July 23, 2017, Plaintiff Thapa worked from approximately 11:00 a.m. until on or about 11:00 p.m. (with a 2-hour break) six days a week (typically 60 hours per week).

94. Throughout his employment, Defendants paid Plaintiff Thapa his wages in a combination of cash and check.

95. From approximately April 4, 2016 until on or about July 23, 2017, Defendants paid Plaintiff Thapa a fixed salary of \$400 per week.

96. However, for approximately 12 weeks, Defendants did not pay Plaintiff Thapa any wages for the hours he worked.

97. Plaintiff Thapa's pay did not vary even when he was required to stay late or work a longer day than his usual schedule.

98. In fact, defendants required Plaintiff Thapa to continue working 30 minutes past his regular departure time every day, and did not pay him for the additional time worked.

99. Defendants never notified Plaintiff Thapa that his tips were being included as an offset for wages.

100. Defendants did not account for these tips in any daily or weekly accounting of Plaintiff Thapa's wages.

101. Defendants did not provide Plaintiff Thapa with an accurate statement of wages with each payment of wages, as required by NYLL 195(3).

102. No notification, either in the form of posted notices or other means, was ever given to Plaintiff Thapa regarding overtime and wages under the FLSA and NYLL.

103. Defendants did not give any notice to Plaintiff Thapa of his rate of pay, employer's regular pay day, and such other information as required by NYLL §195(1).

104. Defendants required Plaintiff Thapa to purchase "tools of the trade" with his own funds— including one bicycle, one helmet, a lock and chain, one vest, and one set of lights.

*Plaintiff Ajaya Nagarkoti*

105. Plaintiff Nagarkoti has been employed by defendants from approximately June 2016 until the present date.

106. Defendants have ostensibly employed Plaintiff Nagarkoti as a server and food runner.

107. However, Plaintiff Nagarkoti has also been required to spend a significant portion of his work day performing the non-tipped duties described above.

108. Although Plaintiff Nagarkoti has ostensibly been employed as a tipped worker, he has spent over 20% of each day performing non-tipped work throughout his employment with Defendants.

109. Plaintiff Nagarkoti has regularly handled goods in interstate commerce, such as food and other supplies produced outside the State of New York.

110. Plaintiff Nagarkoti's work duties have required neither discretion nor independent judgment.

111. Throughout his employment with Defendants, Plaintiff Nagarkoti has regularly worked in excess of 40 hours per week.

112. From approximately June 2016 until the present date, Plaintiff Nagarkoti has worked from approximately 11:30 a.m. until on or about 11:30 p.m. (with a 2-hour break) four days a week and from approximately 11:30 a.m. until on or about 12:30 a.m. (with a 2-hour break) two days a week (typically 62 hours per week).

113. Throughout his employment, Defendants have paid Plaintiff Nagarkoti his wages by personal check.

114. From approximately June 2016 until on or about October 9, 2016, Defendants paid Plaintiff Nagarkoti a fixed salary of \$45 per day.

115. From approximately October 10, 2016 until on or about November 13, 2016, Defendants failed to pay Plaintiff Nagarkoti any wages for his hours worked.

116. From approximately November 14, 2016 until on or about June 4, 2017, Defendants paid Plaintiff Nagarkoti a fixed salary of \$45 per day.

117. From approximately June 5, 2016 until on or about August 6, 2017, Defendants failed to pay Plaintiff Nagarkoti any wages for his hours worked.



118. From approximately August 7, 2016 until the present date, Defendants have paid Plaintiff Nagarkoti a fixed salary of \$45 per day.

119. Plaintiff Nagarkoti's pay has never varied, even when he has been required to stay late or work a longer day than his usual schedule.

120. In fact, Defendants have required Plaintiff Nagarkoti to continue working 30 minutes past his regular departure time every day, and have not paid him for the additional time worked.

121. Defendants have never notified Plaintiff Nagarkoti that his tips are being included as an offset for wages.

122. Defendants have not accounted for these tips in any daily or weekly accounting of Plaintiff Nagarkoti's wages.

123. Defendants have withheld a portion of Plaintiff Nagarkoti's tips; specifically, Defendants failed to give Plaintiff Nagarkoti his tips from approximately October 10, 2016 until on or about November 13, 2016, and from approximately June 2017 until on or about August 6, 2017.

124. Furthermore, Defendants have not provided Plaintiff Nagarkoti with an accurate statement of wages with each payment of wages, as required by NYLL 195(3).

125. No notifications, either in the form of posted notices or other means, has ever been given to Plaintiff Nagarkoti regarding overtime and wages under the FLSA and NYLL.

126. Defendants have never given any notice to Plaintiff Nagarkoti of his rate of pay, employer's regular pay day, and such other information as required by NYLL §195(1).

127. Defendants have required Plaintiff Nagarkoti to purchase "tools of the trade" with his own funds—including three pairs of pants, three shirts, one pair of shoes and one apron.

*Plaintiff Modou Thiam*

128. Plaintiff Thiam has been employed by Defendants from approximately January 2016 until the present date.

129. Defendants have employed Plaintiff Thiam as a dishwasher.

130. Plaintiff Thiam has regularly handled goods in interstate commerce, such as food and other supplies produced outside the State of New York.

131. Plaintiff Thiam's work duties have required neither discretion nor independent judgment.

132. Throughout his employment with Defendants, Plaintiff Thiam has regularly worked in excess of 40 hours per week.

133. From approximately January 2016 until the present date, Plaintiff Thiam has worked from approximately 11:00 a.m. until on or about 11:00 p.m. (with a 2-hour break) Mondays through Fridays, and from approximately 11:00 a.m. until on or about 1 a.m. (with a 2-hour break) one day of the weekend (typically 62 hours per week).

134. Throughout his employment with Defendants, Plaintiff Thiam has been paid his wages by check.

135. From approximately January 2016 until the present date, Defendants have paid Plaintiff Thiam a fixed salary of \$450 per week.

136. Plaintiff Thiam's pay has never varied, even when he has been required to stay late or work a longer day than his usual schedule.

137. In fact, Defendants have required Plaintiff Thiam to continue working 10 minutes past his regular departure time every day, and have not paid him for the additional time worked.

138. Furthermore, Defendants have not provided Plaintiff Thiam with an accurate statement of wages with each payment of wages, as required by NYLL 195(3).

139. No notifications, either in the form of posted notices or other means, have ever been given to Plaintiff Thiam regarding overtime and wages under the FLSA and NYLL.

140. Defendants have never given any notice to Plaintiff Thiam of his rate of pay, employer's regular pay day, and such other information as required by NYLL §195(1).

*Plaintiff Jalal Khan*

141. Plaintiff Khan has been employed by defendants from approximately January 1, 2016 until the present date.

142. Defendants have ostensibly employed Plaintiff Khan as a cook.

143. Plaintiff Khan has regularly handled goods in interstate commerce, such as food and other supplies produced outside the State of New York.

144. Plaintiff Khan's work duties have required neither discretion nor independent judgment.

145. Throughout his employment with Defendants, Plaintiff Khan has regularly worked in excess of 40 hours per week.

146. From approximately January 1, 2016 until the present, Plaintiff Khan has worked from approximately 11:00 a.m. until on or about 11:00 p.m. (sometimes with a break of 1 to 2-hours) Tuesdays through Fridays, and from 11:00 a.m. until on or about 1:00 a.m. (sometimes with a 1 to 2-hour break) Saturdays and Sundays (typically 64 to 76 hours per week).

147. Throughout his employment, Plaintiff Khan has been paid his wages by personal check.

148. From approximately January 1, 2016 until the present date, Defendants have paid Plaintiff Khan a fixed salary of \$800 per week.

149. Throughout his employment, Defendants have failed to pay Plaintiff Khan his wages for a total of 8 weeks of work.

150. Plaintiff Khan's pay has never varied, even when he has been required to stay late or work a longer day than his usual schedule.

151. In fact, Defendants have required Plaintiff Khan to continue working 1 hour past his regular departure time once a week and have required Plaintiff Khan to keep working without a break due to work demands. Defendants have not paid Plaintiff Khan for the additional time worked.

152. Furthermore, Defendants have not provided Plaintiff Khan with an accurate statement of wages with each payment of wages, as required by NYLL 195(3).

153. No notifications, either in the form of posted notices or other means, have ever been given to Plaintiff Khan regarding overtime and wages under the FLSA and NYLL.

154. Defendants have never given any notice to Plaintiff Khan of his rate of pay, employer's regular pay day, and such other information as required by NYLL §195(1).

*Plaintiff Lokendra Bahadur*

155. Plaintiff Bahadur was employed by defendants from approximately July 28, 2017 until on or about August 14, 2017.

156. Defendants employed Plaintiff Bahadur as a kitchen helper.

157. Plaintiff Bahadur regularly handled goods in interstate commerce, such as food and other supplies produced outside the State of New York.

158. Plaintiff Bahadur's work duties required neither discretion nor independent judgment.

159. Throughout his employment with Defendants, Plaintiff Bahadur regularly worked in excess of 40 hours per week.

160. From approximately July 28, 2017 until on or about August 14, 2017, Plaintiff Bahadur worked from approximately 11:00 a.m. until on or about 3:00 p.m. and from approximately 5:00 p.m. until on or about 11:00 p.m. six days a week (typically 60 hours per week).

161. Throughout his employment, Defendants paid Plaintiff Bahadur his wages in cash.

162. Throughout his employment, Defendants paid Plaintiff Bahadur a fixed salary of \$550 per week.

163. Defendants did not provide Plaintiff Bahadur with an accurate statement of wages with each payment of wages, as required by NYLL 195(3).

164. No notifications, either in the form of posted notices or other means, were ever given to Plaintiff Bahadur regarding overtime and wages under the FLSA and NYLL.

165. Defendants did not give any notice to Plaintiff Bahadur of his rate of pay, employer's regular pay day, and such other information as required by NYLL §195(1).

*Plaintiff Rajiv Maharjan*

166. Plaintiff Maharjan was employed by defendants from approximately March 2016 until on or about April 2017.

167. Defendants ostensibly employed Plaintiff Maharjan as a waiter and food runner.

168. However, throughout his employment, Plaintiff Maharjan was required to spend a significant portion of his work day performing the non-tipped duties described above.

169. Although Plaintiff Maharjan ostensibly was employed as a tipped employee, he spent over 20% of his work days performing non-tipped work throughout his employment with Defendants.

170. Plaintiff Maharjan regularly handled goods in interstate commerce, such as food and other supplies produced outside the State of New York.

171. Plaintiff Maharjan's work duties required neither discretion nor independent judgment.

172. Throughout his employment with Defendants, Plaintiff Maharjan regularly worked in excess of 40 hours per week.

173. From approximately March 2016 until on or about April 2017, Plaintiff Maharjan worked from approximately 11:00 a.m. until on or about 12:00 to 1:00 a.m.(with a 2-hour break) approximately 5 to 6 days a week (typically 55 to 72 hours per week).

174. From approximately March 2016 until on or about April 2017, Plaintiff Maharjan was paid his wages in cash.

175. Throughout his employment, Defendants paid Plaintiff Maharjan a fixed salary of \$40 per day.

176. However, for approximately 6 to 7 weeks, Defendants did not pay Plaintiff Maharjan any wages for the hours he worked.

177. Defendants paid Plaintiff Maharjan his wages in irregular installments, causing him to lose tips and wages for many hours worked.

178. Plaintiff Maharjan's pay did not vary even when he was required to stay late or work a longer day than his usual schedule.

179. In fact, defendants required Plaintiff Maharjan to continue working 30 minutes past his regular departure time every day, and did not pay him for the additional time worked.

180. Defendants never notified Plaintiff Maharjan that his tips were being included as an offset for wages.

181. Defendants did not account for these tips in any daily or weekly accounting of Plaintiff Maharjan's wages.

182. Furthermore, Defendants did not provide Plaintiff Maharjan with an accurate statement of wages with each payment of wages, as required by NYLL 195(3).

183. No notifications, either in the form of posted notices or other means, were ever given to Plaintiff Maharjan regarding overtime and wages under the FLSA and NYLL.

184. Defendants did not give any notice to Plaintiff Maharjan of his rate of pay, employer's regular pay day, and such other information as required by NYLL §195(1).

*Plaintiff Rakesh Gurung*

185. Plaintiff Gurung has been employed by defendants from approximately June 19, 2017 until the present date.

186. Defendants have employed Plaintiff Gurung as a cook.

187. Plaintiff Gurung has regularly handled goods in interstate commerce, such as food and other supplies produced outside the State of New York.

188. Plaintiff Gurung's work duties have required neither discretion nor independent judgment.

189. Throughout his employment with Defendants, Plaintiff Gurung has regularly worked in excess of 40 hours per week.

190. From approximately June 19, 2017 until the present date, Plaintiff Gurung has worked from approximately 11:00 a.m. until on or about 11:00 p.m. (with a 2-hour break) three days a week and from approximately 11:00 a.m. until on or about 12:00 a.m. (with a 2-hour break) three days a week (typically 63 hours per week).

191. From approximately June 19, 2017 until on or about July 30, 2017 and from approximately August 5, 2017 until the present date, Defendants have paid Plaintiff Gurung his wages by personal check.

192. From approximately June 19, 2017 until on or about July 30, 2017 and from approximately August 5, 2017 until the present date, Defendants have paid Plaintiff Gurung a fixed salary of \$1,000 per week.

193. From approximately July 31, 2017 until on or about August 5, 2017, Defendants failed to pay Plaintiff Gurung his wages for any hours worked.

194. Defendants have never provided Plaintiff Gurung with an accurate statement of wages with each payment of wages, as required by NYLL 195(3).

195. No notifications, either in the form of posted notices or other means, has ever been given to Plaintiff Gurung regarding overtime and wages under the FLSA and NYLL.

196. Defendants have never given any notice to Plaintiff Gurung of his rate of pay, employer's regular pay day, and such other information as required by NYLL §195(1).

*Plaintiff Puja Shrestha*

197. Plaintiff Puja was employed by defendants from approximately August 2016 until on or about June 2017.



198. Defendants ostensibly employed Plaintiff Puja as a server.

199. Plaintiff Puja regularly handled goods in interstate commerce, such as food and other supplies produced outside the State of New York.

200. Plaintiff Puja's work duties required neither discretion nor independent judgment.

201. Throughout her employment with Defendants, Plaintiff Puja regularly worked in excess of 40 hours per week.

202. From approximately August 2016 until on or about June 2017, Plaintiff Puja worked from approximately 11:00 a.m. until on or about 11:00 p.m. to 1:00 a.m. (with a 2-hour break) Fridays through Mondays (typically 40 to 48 hours per week).

203. For approximately 4 weeks out of the year, Plaintiff Puja worked from approximately 11:00 a.m. until on or about 11:00 p.m. to 1:00 a.m. (with a 2-hour break) Fridays through Mondays and from approximately 11:00 a.m. until on or about 11:00 p.m. to 1:00 a.m. (with a 2-hour break) Wednesdays and Thursdays (typically 60 to 72 hours per week).

204. From approximately August 2016 until on or about May 2017, Defendants paid Plaintiff Puja her wages in cash.

205. From approximately May 2017 until on or about June 2017, Defendants paid Plaintiff Puja her wages by personal check.

206. From approximately August 2016 until on or about June 2017, Defendants paid Plaintiff Puja a fixed salary of \$45 per day.

207. For approximately 8 weeks throughout her employment, Defendants failed to pay Plaintiff Puja her wages for any hours worked.

208. Plaintiff Puja's pay never varied, even when she was required to stay later or work a longer day than her usual schedule.

209. In fact, Defendants required Plaintiff Puja to leave 30 minutes to 2 hours past her scheduled departure time, without paying her for the additional time worked.

210. Defendants never notified Plaintiff Puja that her tips were being included as an offset for wages.

211. Defendants never accounted for these tips in any daily or weekly accounting of Plaintiff Puja's wages.

212. Furthermore, Defendants did not provide Plaintiff Puja with an accurate statement of wages with each payment of wages, as required by NYLL 195(3).

213. No notifications, either in the form of posted notices or other means, were ever given to Plaintiff Puja regarding overtime and wages under the FLSA and NYLL.

214. Defendants did not give any notice to Plaintiff Puja of her rate of pay, employer's regular pay day, and such other information as required by NYLL §195(1).

215. Defendants required Plaintiff Puja to purchase "tools of the trade" with her own funds—including black pants and a black shirt.

*Plaintiff Baskaran Nagarajah*

216. Plaintiff Nagarajah was employed by defendants from approximately December 12, 2015 until on or about July 10, 2017.

217. Defendants employed Plaintiff Nagarajah as a cook.

218. Plaintiff Nagarajah regularly handled goods in interstate commerce, such as food and other supplies produced outside the State of New York.

219. Plaintiff Nagarajah's work duties required neither discretion nor independent judgment.

220. Throughout his employment with Defendants, Plaintiff Nagarajah regularly worked in excess of 40 hours per week.

221. From approximately December 12, 2015 until on or about July 10, 2017, Plaintiff Nagarajah worked from approximately 10:00 a.m. until on or about 4:30 p.m. and from approximately 6:30 p.m. until on or about 11:30 p.m. Tuesdays, from approximately 12:00 p.m. until on or about 4:30 p.m. and from approximately 6:30 p.m. until on or about 11:30 p.m. Sundays, Mondays, and Wednesdays, and from approximately 12:30 p.m. until on or about 4:30 p.m. and from approximately 6:30 p.m. until on or about 12:30 a.m. Fridays and Saturdays (typically 60 hours per week).

222. From approximately December 12, 2015 until on or about June 2016, Defendants paid Plaintiff Nagarajah his wages in cash.

223. From approximately June 2016 until on or about November 2016, Defendants paid Plaintiff Nagarajah his wages in a combination of check and cash.

224. From approximately November 2016 until on or about July 10, 2017, Defendants paid Plaintiff Nagarajah his wages by personal check.

225. From approximately December 12, 2015 until on or about July 12, 2016, Defendants paid Plaintiff Nagarajah a fixed salary of \$1,000 per week.

226. From approximately July 13, 2016 until on or about August 2016, and from approximately October 2016 until on or about May 20, 2017, Defendants paid Plaintiff Nagarajah a fixed salary of \$1,200 per week.

227. From approximately September 1, 2016 until on or about September 30, 2016 and from approximately May 21, 2017 until on or about July 10, 2017, Defendants failed to pay Plaintiff Nagarajah any wages for his hours worked.

228. Additionally, Defendants failed to pay Plaintiff Nagarajah his wages for a week in 2017.

229. Defendants did not provide Plaintiff Nagarajah with an accurate statement of wages with each payment of wages, as required by NYLL 195(3).

230. No notifications, either in the form of posted notices or other means, were ever given to Plaintiff Nagarajah regarding overtime and wages under the FLSA and NYLL.

231. Defendants did not give any notice to Plaintiff Nagarajah of his rate of pay, employer's regular pay day, and such other information as required by NYLL §195(1).

232. Defendants required Plaintiff Nagarajah to purchase "tools of the trade" with his own funds—including two pairs of kitchen shoes and three kitchen hats.

*Plaintiff Aldrine Britto*

233. Plaintiff Britto was employed by Defendants from approximately March 2016 until on or about November 2016.

234. Defendants ostensibly employed Plaintiff Britto as a senior server and assistant to the manager.

235. However, throughout his employment, Plaintiff Britto was required to spend a significant portion of his work day performing the non-tipped duties described above.

236. Although Plaintiff Britto ostensibly was employed as a tipped employee, he spent over 20% of his work days performing non-tipped work throughout his employment with Defendants.

237. Plaintiff Britto regularly handled goods in interstate commerce, such as food and other supplies produced outside the State of New York.

238. Plaintiff Britto's work duties required neither discretion nor independent judgment.

239. Throughout his employment with Defendants, Plaintiff Britto regularly worked in excess of 40 hours per week.

240. From approximately March 2016 until on or about November 2016, Plaintiff Britto worked from approximately 11:00 a.m. until on or about 11:30 p.m. (with a 2-hour break) Mondays through Thursdays, and from approximately 11:00 a.m. until on or about 1:00 a.m. (with a 2-hour break) Fridays (typically 54 hours per week).

241. From approximately March 2016 until on or about June 2016, Defendants paid Plaintiff Britto his wages in cash.

242. From approximately June 2016 until on or about November 2016, Defendants paid Plaintiff Britto his wages by check.

243. From approximately March 2016 until on or about November 2016, Defendants paid Plaintiff Britto a fixed salary of \$50 per day.

244. For approximately 3 weeks throughout his employment, Defendants failed to pay Plaintiff Britto for his hours worked.

245. Defendants paid Plaintiff Britto his wages in irregular installments, causing him to lose tips and wages for many hours worked.

246. Plaintiff Britto's pay did not vary even when he was required to stay late or work a longer day than his usual schedule.

247. In fact, defendants required Plaintiff Britto to continue working 30 minutes past his regular departure time every day, and did not pay him for the additional time worked.

248. Defendants never notified Plaintiff Britto that his tips were being included as an offset for wages.

249. Defendants did not account for these tips in any daily or weekly accounting of Plaintiff Britto's wages.

250. Furthermore, Defendants did not provide Plaintiff Britto with an accurate statement of wages with each payment of wages, as required by NYLL 195(3).

251. No notifications, either in the form of posted notices or other means, were ever given to Plaintiff Britto regarding overtime and wages under the FLSA and NYLL.

252. Defendants did not give any notice to Plaintiff Britto of his rate of pay, employer's regular pay day, and such other information as required by NYLL §195(1).

*Plaintiff Ravi Budha Magar*

253. Plaintiff Magar has been employed by Defendants from approximately July 10, 2016 until the present date.

254. Defendants have ostensibly employed Plaintiff Magar as a food runner and server.

255. However, throughout his employment, Plaintiff Magar has also been required to spend a significant portion of his work day performing the non-tipped duties described above.

256. Although Plaintiff Magar has ostensibly been employed as a tipped employee, he has spent over 20% of each work day performing non-tipped work throughout his employment with Defendants.

257. Plaintiff Magar has regularly handled goods in interstate commerce, such as food and other supplies produced outside the State of New York.

258. Plaintiff Magar's work duties have required neither discretion nor independent judgment.

259. Throughout his employment with Defendants, Plaintiff Magar has regularly worked in excess of 40 hours per week.

260. From approximately July 10, 2017 until the present date, Plaintiff Magar has worked from approximately 11:15 to 11:30 a.m. until on or about 3:30 p.m. and from approximately 5:00 to 5:30 p.m. until on or about 11:30 p.m. to 12:00 a.m. 6 days a week (typically 60 to 67.5 hours per week).

261. Throughout his employment, Defendants have paid Plaintiff Magar his wages by check and in cash.

262. From approximately July 10, 2017 until on or about July 23, 2017 and from approximately August 7, 2017 until the present date, Defendants have paid Plaintiff Magar a fixed salary of \$45 per day.

263. From approximately July 24, 2017 until on or about August 6, 2017, Defendants failed to pay Plaintiff Magar any wages for his hours worked.

264. Plaintiff Magar's pay has never varied, even when he has been required to stay late or work a longer day than his usual schedule.

265. In fact, Defendants have required Plaintiff Magar to arrive before his scheduled arrival time and to continue working past his regular departure time every day, and have not paid him for the additional time worked.

266. Defendants have never notified Plaintiff Magar that his tips are being included as an offset for wages.

267. Defendants have not accounted for these tips in any daily or weekly accounting of Plaintiff Magar's wages.

268. Furthermore, Defendants have not provided Plaintiff Magar with an accurate statement of wages with each payment of wages, as required by NYLL 195(3).

269. No notifications, either in the form of posted notices or other means, have ever been given to Plaintiff Magar regarding overtime and wages under the FLSA and NYLL.

270. Defendants have never given any notice to Plaintiff Magar of his rate of pay, employer's regular pay day, and such other information as required by NYLL §195(1).

271. Defendants have required Plaintiff Magar to purchase "tools of the trade" with his own funds—including shirts, pants, and shoes.

*Plaintiff Shivraj Ghale (a/k/a Shivren)*

272. Plaintiff Ghale was employed by Defendants from approximately January 17, 2016 until on or about November 24, 2016.

273. Defendants employed Plaintiff Ghale as a cook.

274. Plaintiff Ghale regularly handled goods in interstate commerce, such as food and other supplies produced outside the State of New York.

275. Plaintiff Ghale's work duties required neither discretion nor independent judgment.

276. Throughout his employment with Defendants, Plaintiff Ghale regularly worked in excess of 40 hours per week.

277. From approximately January 17, 2016 until on or about November 24, 2016, Plaintiff Ghale worked from approximately 11:00 a.m. until on or about 3:00 p.m. and from approximately 5:00 p.m. until on or about 11:00 p.m. Mondays, Tuesdays, and Thursdays, and from approximately 11:00 a.m. until on or about 3:00 p.m. and from approximately 5:00 p.m. until on or about 12:00 a.m. Fridays, Saturdays, and Sundays (typically 63 hours per week).



278. Throughout his employment, Defendants paid Plaintiff Ghale his wages in cash.

279. From approximately January 17, 2016 until on or about February 12, 2016, Defendants paid Plaintiff Ghale a fixed salary of \$850 per week.

280. From approximately February 13, 2016 until on or about October 31, 2016, Defendants paid Plaintiff Ghale a fixed salary of \$900 per week.

281. From approximately November 1, 2016 until on or about November 24, 2016, Defendants failed to pay Plaintiff Ghale any wages for his hours worked. In fact, Defendants allegedly harassed Plaintiff Ghale by calling him names and teasing him about the money they had not paid him.

282. Defendants did not provide Plaintiff Ghale with an accurate statement of wages with each payment of wages, as required by NYLL 195(3).

283. No notification, either in the form of posted notices or other means, was ever given to Plaintiff Ghale regarding overtime and wages under the FLSA and NYLL.

284. Defendants did not give any notice to Plaintiff Ghale of his rate of pay, employer's regular pay day, and such other information as required by NYLL §195(1).

285. Defendants required Plaintiff Ghale to purchase "tools of the trade" with his own funds—including a pair of kitchen shoes.

*Plaintiff Sonam Tashi*

286. Plaintiff Tashi was employed by Defendants from approximately August 31, 2016 until on or about July 21, 2017.

287. Defendants employed Plaintiff Tashi as a cook.

288. Plaintiff Tashi regularly handled goods in interstate commerce, such as food and other supplies produced outside the State of New York.

289. Plaintiff Tashi's work duties required neither discretion nor independent judgment.

290. Throughout his employment with Defendants, Plaintiff Tashi regularly worked in excess of 40 hours per week.

291. From approximately August 31, 2016 until on or about July 21, 2017, Plaintiff Tashi worked from approximately 10:00 a.m. until on or about 10:00 p.m. (with a 2-hour break) Mondays, Wednesdays, and Thursdays, and from approximately 11:00 a.m. until on or about 11:00 p.m. (with a 2-hour break) Fridays and Saturdays (typically 50 hours per week).

292. Throughout his employment, Defendants paid Plaintiff Tashi his wages by check.

293. From approximately August 31, 2016 until on or about January 2017, Defendants paid Plaintiff Tashi a fixed salary of \$600 per week.

294. From approximately February 2017 until on or about July 21, 2017, Defendants paid Plaintiff Tashi a fixed salary of \$500 per week.

295. For approximately 3 months, Defendants failed to pay Plaintiff Tashi any wages for his hours worked.

296. Defendants did not provide Plaintiff Tashi with an accurate statement of wages with each payment of wages, as required by NYLL 195(3).

297. No notification, either in the form of posted notices or other means, was ever given to Plaintiff Tashi regarding overtime and wages under the FLSA and NYLL.

298. Defendants did not give any notice to Plaintiff Tashi of his rate of pay, employer's regular pay day, and such other information as required by NYLL §195(1).

299. Defendants required Plaintiff Tashi to purchase "tools of the trade" with his own funds—including six shirts and four pants.

*Defendants' General Employment Practices*

300. At all times relevant to this Complaint, Defendants have maintained a policy and practice of requiring Plaintiffs (and all similarly situated employees) to work in excess of 40 hours a week without paying them appropriate minimum wage, overtime and spread of hours pay as required by federal and state laws.

301. Plaintiffs have been victims of Defendants' common policy and practices which violate their rights under the FLSA and New York Labor Law by, *inter alia*, not paying them the wages they were owed for the hours they worked.

302. Defendants' pay practices have resulted in Plaintiffs not receiving payment for all their hours worked, resulting in Plaintiffs' effective rate of pay falling below the required minimum wage rate.

303. As part of its regular business practice, Defendants have intentionally, willfully, and repeatedly harmed Plaintiffs by engaging in a pattern, practice, and/or policy of violating the FLSA and the NYLL.

304. Defendants have required tipped Plaintiffs to perform general non-tipped restaurant tasks in addition to their primary duties as tipped workers.

305. These Plaintiffs have been employed ostensibly as tipped employees by Defendants, although their actual duties have included a significant amount of time spent performing non-tipped duties.

306. These Plaintiffs have been paid at a rate that is lower than the required tip-credited rate by Defendants. However, under state law, Defendants are not entitled to a tip credit because these Plaintiffs' non-tipped duties exceed 20% of each workday (or 2 hours a day, whichever is less). 12 N.Y. C.R.R. § 146.

307. New York State regulations provide that an employee cannot be classified as a tipped employee “on any day... in which he has been assigned to work in an occupation in which tips are not customarily received.” (12 N.Y.C.R.R. §§137-3.3 and 137-3.4). Similarly, under federal regulation 29 C.F.R. §531.56(e), an employer may not take a tip credit for any employee time if that time is devoted to a non-tipped occupation.

308. These Plaintiffs’ duties have not been incidental to their occupation as tipped workers, but instead have constituted entirely unrelated general restaurant work with duties including the non-tipped duties described above.

309. In violation of federal and state law, as discussed above, Defendants classified these Plaintiffs as tipped employees but have not even paid them at the tip-credited rate when they should have classified them as non-tipped employees and paid them at the minimum wage rate.

310. At no time have Defendants informed Plaintiffs that they have reduced their hourly wage by a tip allowance.

311. Defendants have failed to inform Plaintiffs who receive tips that Defendants intend to take a deduction against Plaintiffs’ earned wages for tip income, as required by the NYLL before any deduction may be taken.

312. Defendants have failed to inform Plaintiffs that their tips are being credited towards the payment of the minimum wage.

313. Defendants have failed to maintain a record of tips earned by Plaintiffs for the tipped work they have performed.

314. Plaintiffs have been paid their wages either in cash, by personal checks or in a combination of check and cash.

315. Upon information and belief, these practices by Defendants have been done willfully to disguise the actual number of hours Plaintiffs (and similarly situated individuals) have worked, and to avoid paying Plaintiffs properly for their full hours worked.

316. Defendants have engaged in their unlawful conduct pursuant to a corporate policy of minimizing labor costs and denying employees compensation by knowingly violating the FLSA and NYLL.

317. Defendants' unlawful conduct has been intentional, willful, in bad faith, and has caused significant damages to Plaintiffs and other similarly situated current and former tipped workers.

318. Defendants have failed to post at the workplace, or otherwise provide to employees, the required postings or notices to employees regarding the applicable wage and hour requirements of the FLSA and NYLL.

319. Defendants have failed to provide Plaintiffs and other employees with accurate wage statements at the time of their payment of wages, containing: the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; net wages; the regular hourly rate or rates of pay; the overtime rate or rates of pay; the number of regular hours worked; and the number of overtime hours worked, as required by NYLL §195(3).

320. Defendants have failed to provide Plaintiffs and other employees, at the time of hiring and on or before February 1 of each subsequent year, a statement in English and the employees' primary language, containing: the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances; the regular pay day designated by the employer; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main office or principal place of business, and a mailing address if different; and the telephone number of the employer, as required by New York Labor Law §195(1).

**FLSA COLLECTIVE ACTION CLAIMS**

321. Plaintiffs bring their FLSA minimum wage, overtime, and liquidated damages claims as a collective action pursuant to FLSA Section 16(b), 29 U.S.C. § 216(b), on behalf of all similarly situated persons who are or were employed by Defendants on or after the date that is three years before the filing of this Complaint (the "FLSA Class Period"), as employees of Defendants (the "FLSA Class").

322. At all relevant times, Plaintiffs, and other members of the FLSA Class who are and/or have been similarly situated, have had substantially similar job requirements and pay provisions.

323. At all relevant times, Plaintiffs, and other members of the FLSA Class who are and/or have been similarly situated, have been subject to Defendants' common practices, policies, programs, procedures, protocols and plans of willfully failing and refusing to pay them minimum wage and overtime at a one and one-half times their regular rates for work in excess of forty (40) hours per workweek.

324. The claims of Plaintiffs stated herein are similar to those of the other employees.

**FIRST CAUSE OF ACTION**  
**(VIOLATION OF THE MINIMUM WAGE PROVISIONS OF THE FLSA)**

325. Plaintiffs repeat and re-allege all paragraphs above as though fully set forth herein.

326. At all times relevant to this action, Defendants have been Plaintiffs' employers within the meaning of the Fair Labor Standards Act, 29 U.S.C. § 203(d). Defendants have had the power to hire and fire Plaintiffs, controlled the terms and conditions of employment, and determined the rate and method of any compensation in exchange for their employment.

327. At all times relevant to this action, Defendants have been engaged in commerce or in an industry or activity affecting commerce.

328. Defendants constitute an enterprise within the meaning of the Fair Labor Standards Act, 29 U.S.C. § 203 (r-s).

329. In violation of 29 U.S.C. § 206(a), Defendants have failed to pay Plaintiffs at the applicable minimum hourly rate.

330. Defendants' failure to pay Plaintiffs at the applicable minimum hourly rate is willful within the meaning of 29 U.S.C. § 255(a).

331. Plaintiffs have been damaged in an amount to be determined at trial.

**SECOND CAUSE OF ACTION**  
**(VIOLATION OF THE OVERTIME PROVISIONS OF THE FLSA)**

332. Plaintiffs repeat and re-allege all paragraphs above as though fully set forth herein.

333. Defendants, in violation of 29 U.S.C. § 207(a)(1), have failed to pay Plaintiffs overtime compensation at a rate of one and one-half times the regular rate of pay for each hour worked in excess of forty hours in a work week.

334. Defendants' failure to pay Plaintiffs, and the putative FLSA Class members, overtime compensation is willful within the meaning of 29 U.S.C. § 255(a).

335. Plaintiffs have been damaged in an amount to be determined at trial.

**THIRD CAUSE OF ACTION**  
**(VIOLATION OF THE NEW YORK MINIMUM WAGE ACT)**

336. Plaintiffs repeat and re-allege all paragraphs above as though fully set forth herein.

337. At all times relevant to this action, Defendants have been Plaintiffs' employers within the meaning of the N.Y. Lab. Law §§ 2 and 651. Defendants have had the power to hire and fire Plaintiffs, controlled their terms and conditions of employment, and determined the rates and methods of any compensation in exchange for their employment.

338. Defendants, in violation of NYLL § 652(1) and the supporting regulations of the New York State Department of Labor, have paid Plaintiffs less than the minimum wage.

339. Defendants' failure to pay Plaintiffs the minimum wage is willful within the meaning of N.Y. Lab. Law § 663.

340. Plaintiffs have been damaged in an amount to be determined at trial.

**FOURTH CAUSE OF ACTION**  
**(VIOLATION OF THE OVERTIME PROVISIONS OF THE**  
**NEW YORK STATE LABOR LAW)**

341. Plaintiffs repeat and re-allege all paragraphs above as though fully set forth herein.



342. Defendants, in violation of N.Y. Lab. Law § 190 *et seq.*, and supporting regulations of the New York State Department of Labor, have failed to pay Plaintiffs overtime compensation at rates of one and one-half times the regular rate of pay for each hour worked in excess of forty hours in a work week.

343. Defendants' failure to pay Plaintiffs overtime compensation is willful within the meaning of N.Y. Lab. Law § 663.

344. Plaintiffs have been damaged in an amount to be determined at trial.

**FIFTH CAUSE OF ACTION**  
**(VIOLATION OF THE SPREAD OF HOURS WAGE ORDER**  
**OF THE NEW YORK COMMISSIONER OF LABOR)**

345. Plaintiffs repeat and re-allege all paragraphs above as though fully set forth herein.

346. Defendants have failed to pay Plaintiffs one additional hour's pay at the basic minimum wage rate before allowances for each day Plaintiffs' spread of hours exceeded ten hours in violation of New York Lab. Law §§ 190 *et seq.* and 650 *et seq.* and the wage order of the New York Commissioner of Labor codified at N.Y. COMP. CODES R. & REGS. Tit. 12, § 146-1.6.

347. Defendants' failure to pay Plaintiffs an additional hour's pay for each day Plaintiffs' spread of hours exceeded ten hours is willful within the meaning of New York Lab. Law § 663.

348. Plaintiffs have been damaged in an amount to be determined at trial.

**SIXTH CAUSE OF ACTION**  
**(VIOLATION OF THE WAGE STATEMENT PROVISIONS**  
**OF THE NEW YORK LABOR LAW)**

349. Plaintiffs repeat and re-allege all paragraphs above as though set forth fully herein.

350. With each payment of wages, Defendants have failed to provide Plaintiffs with an accurate statement listing each the following: the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; net wages; the regular hourly rate or rates of pay; the overtime rate or rates of pay; the number of regular hours worked; and the number of overtime hours worked, as required by NYLL 195(3).

351. Defendants are liable to each Plaintiff in the amount of \$5,000, together with costs and attorneys' fees.

**SEVENTH CAUSE OF ACTION**  
**(RECOVERY OF EQUIPMENT COSTS)**

352. Plaintiffs repeat and re-allege all paragraphs above as though set forth fully herein.

353. Defendants have required Plaintiffs to pay, without reimbursement, the costs and expenses for purchasing and maintaining equipment and "tools of the trade" required to perform their jobs, such as uniforms, further reducing their wages in violation of the FLSA and NYLL. 29 U.S.C. § 206(a); 29 C.F.R. § 531.35; N.Y. Lab. Law §§ 193 and 198-b.

354. Plaintiffs have been damaged in an amount to be determined at trial.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment against Defendants by:

(a) Designating this action as a collective action and authorizing prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all putative class members apprising them of the pendency of this action, and permitting them to promptly file consents to be Plaintiffs in the FLSA claims in this action;

(b) Declaring that Defendants have violated the minimum wage provisions of, and associated rules and regulations under, the FLSA as to Plaintiffs (including the prospective collective class members);

(c) Declaring that Defendants have violated the overtime wage provisions of, and associated rules and regulations under, the FLSA as to Plaintiffs (including the prospective collective class members);

(d) Declaring that Defendants have violated the recordkeeping requirements of, and associated rules and regulations under, the FLSA with respect to Plaintiffs' (and the prospective collective class members') compensation, hours, wages, and any deductions or credits taken against wages;

(e) Declaring that Defendants' violation of the provisions of the FLSA were willful as to Plaintiffs (including the prospective collective class members);

(f) Awarding Plaintiffs (including the prospective collective class members) damages for the amount of unpaid minimum and overtime wages, and damages for any improper deductions or credits taken against wages under the FLSA as applicable;

(g) Awarding Plaintiffs (including the prospective collective class members)

liquidated damages in an amount equal to 100% of their damages for the amount of unpaid minimum and overtime wages, and damages for any improper deductions or credits taken against wages under the FLSA as applicable pursuant to 29 U.S.C. § 216(b);

(h) Declaring that Defendants have violated the minimum wage provisions of, and rules and orders promulgated under, the NYLL as to Plaintiffs;

(i) Declaring that Defendants have violated the overtime wage provisions of, and rules and orders promulgated under, the NYLL as to Plaintiffs;

(j) Declaring that Defendants have violated the Spread of Hours Wage Order of the New York Commission of Labor as to Plaintiffs;

(k) Declaring that Defendants have violated the notice and recordkeeping requirements of the NYLL with respect to Plaintiffs' compensation, hours, wages and any deductions or credits taken against wages;

(l) Declaring that Defendants' violations of the New York Labor Law and Spread of Hours Wage Order are willful as to Plaintiffs;

(m) Awarding Plaintiffs damages for the amount of unpaid minimum and overtime wages, and for any improper deductions or credits taken against wages, as well as awarding spread of hours pay under the NYLL, as applicable;

(n) Awarding Plaintiffs damages for Defendants' violation of the NYLL notice and recordkeeping provisions, pursuant to NYLL §§198(1-b), 198(1-d);

(o) Awarding Plaintiffs liquidated damages in an amount equal to one hundred percent (100%) of the total amount of minimum wage, spread of hours pay, and overtime compensation shown to be owed pursuant to NYLL § 663 as applicable; and liquidated damages pursuant to NYLL § 198(3);

(p) Awarding Plaintiffs (including the prospective collective class members) pre-judgment and post-judgment interest as applicable;

(q) Awarding Plaintiffs (including the prospective collective class members) the expenses incurred in this action, including costs and attorneys' fees;

(r) Providing that if any amounts remain unpaid upon the expiration of ninety days following issuance of judgment, or ninety days after expiration of the time to appeal and no appeal is then pending, whichever is later, the total amount of judgment shall automatically increase by fifteen percent, as required by NYLL § 198(4); and

(s) All such other and further relief as the Court deems just and proper.

#### JURY DEMAND

Plaintiffs demand a trial by jury on all issues triable by a jury.

Dated: New York, New York  
September 5, 2017

MICHAEL FAILLACE & ASSOCIATES, P.C.

By:           /s/ Michael Faillace            
Michael Faillace [MF-8436]  
MICHAEL FAILLACE & ASSOCIATES, P.C.  
Michael A. Faillace [MF-8436]  
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# Michael Faillace & Associates, P.C.

Employment and Litigation Attorneys

60 E 42<sup>nd</sup> Street, Suite 4510  
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\_\_\_\_\_  
Faillace@employmentcompliance.com

August 16, 2017

BY HAND

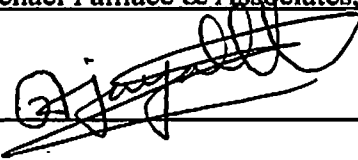
TO: Clerk of Court,

I hereby consent to join this lawsuit as a party plaintiff.

Name / Nombre: Ajaya Nagarkoti

Legal Representative / Abogado: Michael Faillace & Associates, P.C.

Signature / Firma:

  
\_\_\_\_\_

Date / Fecha:

16 de agosto de 2017

# Michael Faillace & Associates, P.C.

Employment and Litigation Attorneys

60 E 42<sup>nd</sup> Street, Suite 4510  
New York, New York 10165

Telephone: (212) 317-1200  
Facsimile: (212) 317-1620

\_\_\_\_\_  
Faillace@employmentcompliance.com

August 23, 2017

BY HAND

TO: Clerk of Court,

I hereby consent to join this lawsuit as a party plaintiff.

Name / Nombre:

Aldrine Britto

Legal Representative / Abogado:

Michael Faillace & Associates, P.C.

Signature / Firma:

A. Britto

Date / Fecha:

23 de agosto de 2017

# Michael Faillace & Associates, P.C.

Employment and Litigation Attorneys

60 E 42<sup>nd</sup> Street, Suite 2540  
New York, New York 10165

Telephone: (212) 317-1200  
Facsimile: (212) 317-1620

\_\_\_\_\_  
Faillace@employmentcompliance.com

August 22, 2017

BY HAND

TO: Clerk of Court,

I hereby consent to join this lawsuit as a party plaintiff.

Name: Baskaran Nagarajah

Legal Representative: Michael Faillace & Associates, P.C.

Signature:

N. Baskaran

Date:

22 de agosto de 2017



# Michael Faillace & Associates, P.C.

Employment and Litigation Attorneys

60 E 42<sup>nd</sup> Street, Suite 2540  
New York, New York 10165

Telephone: (212) 317-1200  
Facsimile: (212) 317-1620

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Faillace@employmentcompliance.com

August 21, 2017

BY HAND


TO: Clerk of Court,

I hereby consent to join this lawsuit as a party plaintiff.

Name : Jalal Khan

Legal Representative : Michael Faillace & Associates, P.C.

Signature:

  
\_\_\_\_\_

Date :

August 21, 2017

# Michael Faillace & Associates, P.C.

Employment and Litigation Attorneys

60 E 42<sup>nd</sup> Street, Suite 4510  
New York, New York 10165

Telephone: (212) 317-1200  
Facsimile: (212) 317-1620

\_\_\_\_\_  
Faillace@employmentcompliance.com

August 21, 2017

BY HAND

TO: Clerk of Court,

I hereby consent to join this lawsuit as a party plaintiff.

**(Yo, por medio de este documento, doy mi consentimiento para formar parte de la demanda como uno de los demandantes.)**

Name / Nombre:

**Lokendra Bahadur**

Legal Representative / Abogado:

Michael Faillace & Associates, P.C.

Signature / Firma:



Date / Fecha:

21 de agosto de 2017

# MICHAEL FAILLACE & ASSOCIATES, P.C.

Employment and Litigation Attorneys

One Grand Central Place  
60 E 42<sup>nd</sup> Street, Suite 4510  
New York, New York 10165

Telephone: (212) 317-1200  
Facsimile: (212) 317-1620  
Email: [Faillace@employmentcompliance.com](mailto:Faillace@employmentcompliance.com)

August 21, 2017

BY HAND

To: Clerk of Court,

I hereby consent to join this lawsuit as a party plaintiff. (Yo, por medio de este documento, doy mi consentimiento para formar parte de la demanda como uno de los demandantes).


Name / Nombre:

Modou Thiam

Legal Representative / Abogado:

Michael Faillace & Associates, P.C.

Signature / Firma:

  
\_\_\_\_\_

Date / Fecha:

August 21, 2017

# Michael Faillace & Associates, P.C.

Employment and Litigation Attorneys

60 E 42<sup>nd</sup> Street, Suite 4510  
New York, New York 10165

Telephone: (212) 317-1200  
Facsimile: (212) 317-1620

\_\_\_\_\_  
Faillace@employmentcompliance.com

August 29, 2017

BY HAND

TO: Clerk of Court,

I hereby consent to join this lawsuit as a party plaintiff.

Name / Nombre:

Puja Shrestha

Legal Representative / Abogado:

Michael Faillace & Associates, P.C.

Signature / Firma:

  
\_\_\_\_\_

Date / Fecha:

August 29, 2017

# Michael Faillace & Associates, P.C.

Employment and Litigation Attorneys

60 E 42<sup>nd</sup> Street, Suite 4510  
New York, New York 10165

Telephone: (212) 317-1200  
Facsimile: (212) 317-1620

\_\_\_\_\_  
Faillace@employmentcompliance.com

August 16, 2017

BY HAND

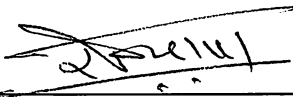
TO: Clerk of Court,

**I hereby consent to join this lawsuit as a party plaintiff.**

Name: Rajendra Thapa-Chhetri

Legal Representative: Michael Faillace & Associates, P.C.

Signature/ Firma:

  
\_\_\_\_\_

Date/ Fecha:

August 16, 2017

# Michael Faillace & Associates, P.C.

Employment and Litigation Attorneys

60 E 42<sup>nd</sup> Street, Suite 4510  
New York, New York 10165

Telephone: (212) 317-1200  
Facsimile: (212) 317-1620

\_\_\_\_\_  
Faillace@employmentcompliance.com

August 22, 2017

BY HAND

TO: Clerk of Court,

I hereby consent to join this lawsuit as a party plaintiff.

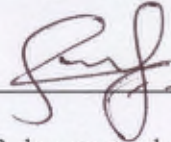
Name / Nombre:

Rajiv Maharjan

Legal Representative / Abogado:

Michael Faillace & Associates, P.C.

Signature / Firma:



Date / Fecha:

22 de agosto de 2017

# Michael Faillace & Associates, P.C.

Employment and Litigation Attorneys

60 E 42<sup>nd</sup> Street, Suite 4510  
New York, New York 10165

Telephone: (212) 317-1200  
Facsimile: (212) 317-1620

\_\_\_\_\_  
Faillace@employmentcompliance.com

August 22, 2017

BY HAND

TO: Clerk of Court,

*I hereby consent to join this lawsuit as a party plaintiff.*

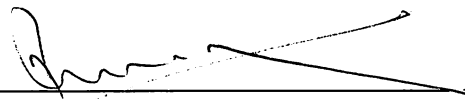
Name:

Rakesh Gurung

Legal Representative:

Michael Faillace & Associates, P.C.

Signature:

  
\_\_\_\_\_

Date:

August 22, 2017

# Michael Faillace & Associates, P.C.

Employment and Litigation Attorneys

60 E 42<sup>nd</sup> Street, Suite 2540  
New York, New York 10165

Telephone: (212) 317-1200  
Facsimile: (212) 317-1620

\_\_\_\_\_  
Faillace@employmentcompliance.com

August 23, 2017

BY HAND

TO: Clerk of Court,


I hereby consent to join this lawsuit as a party plaintiff.

**(Yo, por medio de este documento, doy mi consentimiento para formar parte de la demanda como uno de los demandantes.)**

Name / Nombre: Shivraj Ghale

Legal Representative / Abogado: Michael Faillace & Associates, P.C.

Signature / Firma:



Date / Fecha:

23 de agosto de 2017



# Michael Faillace & Associates, P.C.

Employment and Litigation Attorneys

60 E 42<sup>nd</sup> Street, Suite 4510  
New York, New York 10165

Telephone: (212) 317-1200  
Facsimile: (212) 317-1620

\_\_\_\_\_  
Faillace@employmentcompliance.com

August 24, 2017

BY HAND

TO: Clerk of Court,

I hereby consent to join this lawsuit as a party plaintiff.

Name: Sonam Tashi

Legal Representative: Michael Faillace & Associates, P.C.

Signature: SONAM TASHI

Date: August 24, 2017

# Michael Faillace & Associates, P.C.

Employment and Litigation Attorneys

60 E 42<sup>nd</sup> Street, Suite 2540  
New York, New York 10165

Telephone: (212) 317-1200  
Facsimile: (212) 317-1620

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Faillace@employmentcompliance.com

August 16, 2017

BY HAND

TO: Clerk of Court,

I hereby consent to join this lawsuit as a party plaintiff.

Name: Victor Raymond Dias

Legal Representative: Michael Faillace & Associates, P.C.

Signature:



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Date: August 16, 2017

# Michael Faillace & Associates, P.C.

Employment and Litigation Attorneys

60 E 42<sup>nd</sup> Street, Suite 2540  
New York, New York 10165

Telephone: (212) 317-1200  
Facsimile: (212) 317-1620

\_\_\_\_\_  
Faillace@employmentcompliance.com

August 16, 2017

BY HAND

TO: Clerk of Court,


I hereby consent to join this lawsuit as a party plaintiff.

**(Yo, por medio de este documento, doy mi consentimiento para formar parte de la demanda como uno de los demandantes.)**

Name / Nombre: Prixco Soriano

Legal Representative / Abogado: Michael Faillace & Associates, P.C.

Signature / Firma:

  
\_\_\_\_\_

Date / Fecha:

16 de agosto de 2017

# Michael Faillace & Associates, P.C.

Employment and Litigation Attorneys

60 E 42<sup>nd</sup> Street, Suite 4510  
New York, New York 10165

Telephone: (212) 317-1200  
Facsimile: (212) 317-1620

\_\_\_\_\_  
Faillace@employmentcompliance.com

August 16, 2017

BY HAND

TO: Clerk of Court,

**I hereby consent to join this lawsuit as a party plaintiff.**

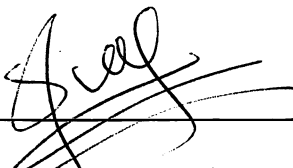
Name:

Sumarna Shrestha

Legal Representative:

Michael Faillace & Associates, P.C.

Signature/ Firma:

  
\_\_\_\_\_  
August 16, 2017

Date/ Fecha:

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Kurry Pavilion Employees File Suit Over Unpaid Wage Claims](#)

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